

# In the Court of Appeals of the State of Alaska

**Ronald Dean Sackett,**  
Appellant,

v.

**State of Alaska,**  
Appellee.

Court of Appeals No. **A-13716**

## **Order**

Date of Order: **August 19, 2020**

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Trial Court Case No. **3KN-10-01858CR**

The Appellant, Ronald Dean Sackett, representing himself, recently filed this merit appeal. In it, Mr. Sackett challenges the superior court's denial of his motion to correct an illegal sentence.

Mr. Sackett has the right to the assistance of counsel in this appeal, but the record does not show that he has ever waived this right in the trial court; nor does it appear that there has been a finding that he is minimally competent to represent himself. It also appears that Mr. Sackett may be eligible to be represented by counsel at public expense.

For these reasons, this Court must remand this case to the superior court to determine if Mr. Sackett is eligible for court-appointed counsel at public expense.

Additionally, even if Mr. Sackett is eligible to be represented by court-appointed counsel at public expense, he may desire to represent himself in this appeal. But because he has a constitutional right to counsel to assist him in the appeal, unless and until he knowingly and intelligently waives that right, any legal proceedings in which he is not represented by counsel would be void. *See Johnson v. Zerbst*, 304 U.S. 458, 467-68; 58 S.Ct. 1019, 1024-25; 82 L.Ed. 1461 (1938) (holding that a deprivation of the right to counsel is equivalent to a lack of jurisdiction).

If Mr. Sackett desires to represent himself, then the superior court must determine whether Mr. Sackett is willing to enter a knowing and intelligent waiver of the right to counsel, and if so, whether he is capable of representing himself on appeal.

Accordingly, **IT IS ORDERED:**

1. This case is remanded to the superior court for a hearing to determine if Mr. Sackett is eligible for the assistance of counsel at public expense.

2. If the superior court finds that Mr. Sackett is eligible for the assistance of counsel at public expense, the superior court shall make an appropriate appointment and shall direct the new attorney to promptly file an entry of appearance in this Court.

3. If the superior court finds that Mr. Sackett is not eligible for the appointment of counsel at public expense, the superior court shall notify this Court of this finding.

4. If Mr. Sackett wishes to represent himself, the superior court shall conduct an inquiry to make sure that Mr. Sackett understands the benefits of counsel and the dangers of representing himself, and to make sure that Mr. Sackett is minimally competent to represent himself — *i.e.*, that he is capable of presenting a comprehensible argument on appeal.

5. As a suggestion, the superior court might advise Mr. Sackett of the following aspects of litigating an appeal:

A criminal defendant who wishes to represent himself on appeal should bear in mind that an appellate court can not re-weigh the evidence or re-determine the facts of his case. Rather, an appellate court can only

decide whether errors of law or mistakes of procedure were committed during the trial court proceedings. Because of this, it is important for a person who is pursuing an appeal to have a working knowledge of criminal law and criminal procedure, as well as good legal research skills, so that they can find the statutes and court decisions that apply to their case. Attorneys have specialized training and experience in these matters, so it is usually better to have an attorney's assistance when pursuing an appeal.

In addition, it helps to have good writing skills — because, in an appeal, a person's arguments are presented to the court primarily in written briefs.

Moreover, the rules governing an appeal are often technical. (For example, there is Appellate Rule 210(b)(1) — the rule that says that if a person wants the appellate court to have a transcript of what happened in the trial court, the person must designate the portions of the trial court proceedings to be transcribed.) Again, attorneys are generally familiar with these rules, or can discover them without much trouble, so it is usually better to have an attorney's assistance.

6. If, after Mr. Sackett is advised of the benefits of counsel and the dangers of self-representation, he still wishes to represent himself, and if the superior court concludes that Mr. Sackett is at least minimally competent to do so, the superior court shall inform this Court of these circumstances. This Court will then allow Mr. Sackett to represent himself.

7. If, on the other hand, Mr. Sackett decides not to represent himself, or if the superior court concludes that Mr. Sackett is not minimally competent to pursue this appeal on his own, then the superior court will — if Mr. Sackett is eligible — appoint counsel to represent him in this appeal, and the superior court shall inform this Court of these circumstances.

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8. Because Mr. Sackett has a constitutional right to the assistance of counsel on appeal, he must expressly and knowingly waive this right if he wishes to represent himself. Accordingly, if Mr. Sackett is unable to make up his mind about whether to represent himself, this means that he has *not* waived his right to counsel, and he will — if he is eligible — be represented by court-appointed counsel at public expense, and the superior court shall inform this Court of these circumstances.

9. The superior court's report on these matters shall be provided to this Court on or before **September 17, 2020**. This due date may be extended at the superior court's request.

In remanding this case, this Court acknowledges that under limitations imposed because of the current public health crisis, this hearing should be done telephonically if possible. If the hearing cannot be done telephonically, then the superior court shall inform this Court of this circumstance as soon as possible.

Entered under the authority of Chief Judge Allard.

Clerk of the Appellate Courts



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Ryan Montgomery-Sythe,  
Chief Deputy Clerk

**Distribution:**

Mail:  
Sackett, Ronald Dean

Email:  
Leaders, Scot Henry  
de Lucia, Tamara Eve

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